

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0090 ST
Sales and Use Tax
For The Tax Periods: 1992, 1993, and 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax – Manufacturing Equipment Exemption: Computer and appurtenances

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, IC 6-2.5-5-3, *Department of State Revenue v. Cave Stone* 457 N.E.2d. 520 (Ind. 1983)

Taxpayer protests the assessment of sales/use tax on its purchase of computer and appurtenances.

II. Sales/Use Tax – Manufacturing Equipment Exemption: Purchase of Publications.

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, IC 6-2.5-5-6

Taxpayer protest the assessment of sales/use tax on its purchase of publications.

STATEMENT OF FACTS

Taxpayer is a publisher of prescription drug pricing information that is sold to pharmacists, drug stores, not-for-profit organizations, manufacturers, and retail chain stores. The product is sold in the following forms:

Magazines
Computer Diskettes
Magnetic Tapes

The process starts with the gathering of price information from pharmaceutical companies by way of telephone conversations or receiving updated price lists sent directly to the taxpayer. Several fax machines are also used in gathering information from manufacturers, universities and government agencies.

Once the information is obtained, it is entered into the company's mainframe computer unit. Programmers enter the information from individual input units. Because of the variety of information obtained, several computer software packages are used to input the data.

After the information is put into the main frame computer (data processing department) it is organized as needed and/or required for the next publication. During this information gathering stage, updates and new ideas are listed before the final data tape is ready for publishing. The lists are processed onto computer printouts on paper, magnetic tape, and diskettes.

The next stage of production is the duplication of information onto the various types of media. Special computer equipment, components, and software are purchased to complete this stage. Given the tremendous amount of software and brands of computers used in a variety of drug-related fields, taxpayer continually purchases programs and equipment to publish its information in a compatible form.

After the information is duplicated onto the various types of media, the product is packaged, labeled and shipped. The product is packaged in specialty boxes and/or envelopes with bubble packs, sealed and shipped to the customer.

I. Sales/Use Tax – Manufacturing Equipment Exemption: Computer and appurtenances

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

IC 6-2.5-5-3(b) provides that transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Interpreting the "double direct" language in IC 6-2.5-5-3(b), the Indiana Supreme Court, in *Department of State Revenue v. Cave Stone* 457 N.E.2d. 520 (Ind. 1983), held that the phrase "direct use in the direct production...of other tangible personal property" requires manufacturing equipment to be an essential and integral part of an integrated production process.

Taxpayer argues that its computers and appurtenances are used directly in the direct production of its product. In a previous audit, taxpayer's purchases of computer equipment were determined 72% exempt and tax was assessed on 28% of the purchases. In the audit being protested here, the computer equipment was determined to be 100% taxable. Taxpayer argues that the previous ratio is consistent with its use of the computer equipment. Taxpayer argues that an essential and integral step in its production of drug pricing manuals is the entering and processing of data into its computer system. Thus, its purchase of computers and related equipment is exempt from tax.

However, these activities are more akin to research and development, like an author writing a book or an artist producing copy. The computer equipment is used before the production process

begins. Thus, taxpayer does not use this equipment directly in its direct production of drug pricing manuals. Therefore, the taxpayer's purchases of computers and appurtenances are taxable. The previous audit was in error.

FINDING

Taxpayer's protest is denied.

II. Sales/Use Tax – Manufacturing Equipment Exemption: Purchase of Publications.

DISCUSSION

IC 6-2.5-5-6 provides that transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for incorporation as a material part of other tangible personal property which the purchaser manufactures, assembles, refines, or processes for sale in his business.

Taxpayer argues that it purchases publications to acquire information that is incorporated as a material part of its production of drug pricing information. However, this information is not incorporated as a material part of the tangible personal property manufactured by taxpayer. The information that is incorporated as a material part of the tangible personal property is the final version of what is to be printed in the drug pricing manuals. Thus, the taxpayer's purchase of publications is subject to tax.

FINDING

Taxpayer's protest is denied.